



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

Docket No. 201214-0337

RIN 0648-BJ98

Fisheries of the Northeastern United States; Golden Tilefish Fishery; Extension of Emergency Action

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action extension.

SUMMARY: This temporary rule extends emergency measures that allow a limited one-time carryover of up to 5 percent of unharvested fishing quota from the 2020 fishing year into the 2021 fishing year. This action is necessary to allow the golden tilefish individual fishing quota shareholders that were eligible for carryover under the emergency measures, but have not yet fully harvested that carryover, an opportunity to use it. This action is intended to provide additional time for quota shareholders to fully harvest their allocations.

DATES: The expiration date of the emergency rule published December 21, 2020 (85 FR 82944) is extended to November 1, 2021.

ADDRESSES: Copies of the Supplemental Information Report prepared for the 2021-2022 Golden Tilefish Specifications and emergency action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Dover, Suite 201, DE 19901. These documents are also accessible via the Internet at <http://www.mafmc.org>.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy

Analyst, (978) 281-9341.

SUPPLEMENTARY INFORMATION:

Background

At the request of the Mid-Atlantic Fishery Management Council, NMFS published a final rule on December 21, 2020 (85 FR 82944) that implemented emergency action for the Tilefish Fishery Management Plan (FMP) to allow a one-time carryover of unharvested Individual Fishing Quota (IFQ) from fishing year 2020 to 2021, up to 5 percent of the original 2020 allocation. A proposed rule for this action was published on November 13, 2020 (85 FR 72616) with a comment period through November 30, 2020. No comments were received on the emergency action.

The tilefish IFQ program does not normally allow any carryover of unharvested allocation from one fishing year into the next. Unforeseen changes in the market for seafood resulting from the COVID-19 pandemic, particularly the loss of restaurant sales due to local closure orders, substantially reduced demand for golden tilefish during the 2020 fishing year. Because of this unprecedented impact on the fishery, we implemented this one-time carry over under our emergency rulemaking authority specified in section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act.

This action extends this emergency action past the current expiration date of June 19, 2021, until the start of the next golden tilefish fishing year on November 1, 2021. This will allow tilefish IFQ quota shareholders who have not yet had an opportunity to harvest the IFQ pounds they carried over additional time to take full advantage of this opportunity.

Each IFQ quota shareholder was eligible to carry over 2020 golden tilefish quota pounds that were not harvested before the end of the 2020 fishing year, up to a maximum amount of 5 percent of their initial 2020 quota pounds. Of the 10 entities that hold quota share in the golden tilefish IFQ program, 5 had unharvested quota pounds at the end of

the 2020 fishing year and were able to carry over some of those quota pounds into the 2021 fishing year. Some quota shareholders have already harvested their carryover while others have not yet taken full advantage of this opportunity. Extending this emergency action ensures that all those who received carryover are able to fully benefit from these measures.

NMFS's policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS's policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. As noted in the December 21, 2020, final rule, NMFS has determined that allowing the carryover of unharvested tilefish IFQ quota pounds as described above meets the three criteria for emergency action.

Section 305(c) of the Magnuson-Stevens Act specifies that emergency regulations may only remain in effect for 180 days from the date of publication and may be extended for one additional period of not more than 186 days. Extending this action until the start of the next fishing year on November 1, 2021, would only be 135 days.

Classification

NMFS is issuing this temporary rule pursuant to section 305(c) of the Magnuson Stevens Act, which authorizes NMFS to implement regulations at the request of the

Council to address an emergency in the fishery. The Acting Assistant Administrator Fisheries, NOAA has determined that this rule is consistent with the Tilefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

Pursuant to 5 U.S.C. 553(d)(3), the Acting Assistant Administrator Fisheries, NOAA finds good cause to waive the 30-day delay in effectiveness for this rule. This rule extends some measures of the rule currently in place through the end of the current fishing year. The need for this extension was fully anticipated and announced to the public in the initial emergency rule which published on December 21, 2020. Accordingly, the entities affected by this rule and the public have no need to be made aware of or adjust to this rule by delaying its effectiveness for 30 days. The primary reason for delaying the effectiveness of Federal regulations is not present, and, therefore, such a delay would serve no public purpose. It would be contrary to the public interest if the emergency measures are allowed to expire on June 19, 2021, because tilefish IFQ quota shareholders could lose any remaining carryover granted by this emergency action. Moreover, allowing the emergency measures to lapse between June 19, 2021, and a later effective date of this extension may lead to confusion in the fishing community. For these reasons, there is good cause to waive the requirement for delayed effectiveness.

The December 21, 2020, final rule that implemented the emergency action was determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the
Paperwork Reduction Act of 1995.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 14, 2021.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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